

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

No. 23-1047 T
(Judge Matthew H. Solomon)

RAMON A. MURILLO,

Plaintiff,

v.

UNITED STATES,

Defendant.

**DEFENDANT’S RESPONSE TO
PLAINTIFF’S MOTION FOR REFERRAL TO ADR**

On July 27, 2023, plaintiff filed a Motion for Referral to Alternative Dispute Resolution (ADR). (ECF 9.) Plaintiff requests that this case be referred to a Settlement Judge for Mediation or for Early Neutral Evaluation. *See* Rules of the U.S. Court of Federal Claims (RCFC), App. H. ¶ (2)(b), (d), (e). “ADR is voluntary. A party’s good-faith determination that ADR is not appropriate in a particular case should be respected by other parties and by the court.” RCFC App. H ¶ (3)(a). Defendant has determined that ADR is not appropriate at this time because: (1) defendant has not yet received from the Internal Revenue Service (IRS) the administrative files for this case; and (2) plaintiff is currently incarcerated; and (3) plaintiff’s *in forma pauperis* (IFP) application is still pending. Defendant therefore requests that plaintiff’s request be denied without prejudice or stayed.

First, RCFC Appendix H describes one of the main benefits of both Mediation and Early Neutral Evaluation as allowing the parties to candidly communicate about the “strengths and

weaknesses” of their respective positions. Upon receipt of the complaint, defendant’s counsel asked the IRS to assemble and transmit to her office the necessary administrative files and other relevant materials. Defendant’s counsel has not yet received these files. Without the administrative files, defendant is not able to discuss its position regarding this case. Defendant is also not yet able to consider whether there are other means of efficiently resolving this case, for example through settlement or dispositive motion.

Second, plaintiff is currently incarcerated in California. The ADR process involves additional status reports to the Court, *see* RCFC App. H ¶ (3)(g), and communication between the parties and the Settlement Judge, *see* RCFC App. H ¶ (3)(d). Because of the difficulty in communicating with incarcerated plaintiffs, these additional requirements are likely to slow the progress of the case, not hasten it.

Finally, the Court has not yet ruled on plaintiff’s motion for leave to proceed *in forma pauperis*. (ECF 8.) Until the Court rules on plaintiff’s IFP application, defendant contends that ADR is not appropriate.¹

For the foregoing reasons, plaintiff’s request for ADR should be denied without prejudice or stayed.

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¹ Defendant does not intend to file a response to plaintiff’s motion to proceed *in forma pauperis*.

Respectfully submitted,

August 3, 2023

/s/ Elizabeth B. Villarreal
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Of Counsel

CERTIFICATE OF SERVICE

I certify that service of the foregoing has, this 3rd day of August 2023, been made on plaintiff, *pro se* by mailing a copy thereof, in a postage prepaid envelope, to the following address:

Ramon A. Murillo
Richard J. Donovan Correctional Facility
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